

Department of Energy

§ 1045.37

guides or Agency guides coordinated with the DOE. When it is not practical to use classification guides, source documents may be used as an alternative.

(b) *Declassification of RD and FRD documents.* (1) Only designated individuals in the DOE may declassify documents containing RD.

(2) Except as provided in paragraph (b)(3) of this section, only designated individuals in the DOE or appropriate individuals in DoD may declassify documents marked as FRD in accordance with joint DoD-DOE classification guides or DoD guides coordinated with the DOE.

(3) The DOE and DoD may delegate these authorities to other agencies and to contractors. Contractors without the delegated authority shall send any document marked as RD or FRD that needs to be considered for declassification to the appropriate agency office.

§ 1045.33 Appointment of restricted data management official.

(a) Each agency with access to RD or FRD shall appoint an official to be responsible for the implementation of this part and shall advise the Director of Classification of such appointment.

(b) This official shall ensure the proper implementation of this part within his or her agency and shall serve as the primary point of contact for coordination with the Director of Classification on RD and FRD classification and declassification issues.

(c) Within the DoD, an RD management official shall be appointed in each DoD agency.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.34 Designation of restricted data classifiers.

(a) Except within the DoD, RD management officials shall ensure that persons who derivatively classify RD or FRD documents are designated by position or by name as RD classifiers.

(b) All contractor organizations with access to RD and FRD, including DoD contractors, shall designate RD classifiers.

§ 1045.35 Training requirements.

(a) RD management officials shall ensure that persons with access to RD

and FRD information are trained on the authorities required to classify and declassify RD and FRD information and documents and on handling procedures. RD management officials shall ensure that RD classifiers are trained on the procedures for classifying, declassifying, marking and handling RD and FRD information and documents.

(b) The Director of Classification shall develop training materials related to implementation of this part and shall provide these materials to RD management officials and any other appropriate persons.

(c) The Director of Classification shall review any RD-related training material submitted by agency and contractor representatives to ensure consistency with current policy.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.36 Reviews of agencies with access to restricted data and formerly restricted data.

(a) The DOE and each agency with access to RD and FRD shall consult periodically to assure appropriate implementation of this part. Such consultations may result in DOE conducting an on-site review within the agency if DOE and the RD management official determine that such a review would be mutually beneficial or that it is necessary to remedy a problem.

(b) To address issues concerning implementation of this part, the Director of Classification shall establish a standing group of all RD management officials to meet periodically.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.37 Classification guides.

(a) The classification and declassification determinations made by the Director of Classification and the Chief Health, Safety and Security Officer under the classification criteria in § 1045.16 shall be promulgated in classification guides.

(b) DOE shall jointly develop classification guides with the DoD, NRC, NASA, and other agencies as required for programs for which DOE and these agencies share responsibility.

(c) Agencies shall coordinate with the Director of Classification whenever

§ 1045.38

they develop or revise classification guides with RD or FRD information topics.

(d) Originators of classification guides with RD or FRD topics shall review such guides at least every five years and make revisions as necessary.

(e) RD classifiers shall use classification guides as the primary basis for classifying and declassifying documents containing RD and FRD.

(f) Each RD management official shall ensure that all RD classifiers have access to all pertinent nuclear classification guides.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.38 Automatic declassification prohibition.

(a) Documents containing RD and FRD remain classified until a positive action by an authorized person is taken to declassify them.

(b) In accordance with the Atomic Energy Act, no date or event for automatic declassification ever applies to RD and FRD documents, even if such documents also contain NSI.

(c) E.O. 12958 acknowledges that RD and FRD are exempt from all provisions of the E.O., including automatic declassification.

§ 1045.39 Challenging classification and declassification determinations.

(a) Any authorized holder of an RD or FRD document who, in good faith, believes that the RD or FRD document has an improper classification status is encouraged and expected to challenge the classification with the RD Classifier who classified the document.

(b) Agencies shall establish procedures under which authorized holders of RD and FRD documents are encouraged and expected to challenge any classification status they believe is improper. These procedures shall assure that:

(1) Under no circumstances are persons subject to retribution for bringing forth a classification challenge.

(2) The individual who initially receives the challenge provides a response within 90 days to the person bringing forth the challenge.

10 CFR Ch. X (1–1–09 Edition)

(3) A decision concerning a challenge involving RD or FRD may be appealed to the Director of Classification. In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the Director of Classification shall coordinate with the DoD. If the justification for classification does not satisfy the person making the challenge, a further appeal may be made to the Chief Health, Safety and Security Officer.

(c) Classification challenges concerning documents containing RD and FRD information are not subject to review by the Interagency Security Classification Appeals Panel, unless those documents also contain NSI which is the basis for the challenge. In such cases, the RD and FRD portions of the document shall be deleted and then the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.40 Marking requirements.

(a) RD classifiers shall ensure that each RD and FRD document is clearly marked to convey to the holder that it contains RD or FRD information, the level of classification assigned, and the additional markings in paragraphs (b)(3) and (4) of this section.

(b) *Front Marking.* In addition to the overall classification level of the document, the following notices shall appear on the front of the document, as appropriate:

(1) If the document contains RD:

RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(2) If the document contains FRD but does not contain RD:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as RESTRICTED DATA in foreign dissemination. Section 144b, Atomic Energy Act of 1954.

(3) An RD or FRD document shall be marked to identify the classification